IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5705 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT HOUSING BOARD

Versus

MEENAKSHIBEN BHANUSHANKAR BHATT

Appearance:

1. Special Civil Application No. 5705 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR IS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/01/2002

ORAL JUDGEMENT

#. Heard Mr.H.S.Munshaw, learned advocate appearing on behalf of the petitioner and Mr. A.S. Supehia, learned advocate appearing on behalf of the respondent.

#. In the present petition, the petitioner has challenged the award dated 30th December, 2000 passed by the Labour Court, Rajkot in Reference [LCR] No.1374/1989. The Labour Court has granted reinstatement with continuity of service without any backwages for interim period. Learned advocate Mr.Munshaw appearing on behalf of the petitioner has raised first contention to the effect that services of the respondent was terminated on 8th October, 1984 and Reference was made before the labour court by the respondent workman on 9th October, 1989 and therefore, there was delay of five years to raise the industrial dispute by the respondent workman and therefore, the labour court should not have entertained such belated Reference and the Reference was required to be rejected only on the ground of delay. Mr.Munshaw, learned advocate has also pointed out that the delay so occurred in raising the dispute was intentional delay on the part of the respondent workman because she was gainfully employed in some other organisation and when again her services were terminated from the Nigam, thereafter, the dispute was raised by the respondent workman against the present petitioner. The second contention raised by the learned advocate Mr.Munshaw that she was appointed as on periodical basis and therefore, as and when the period of service was over, her services was terminated, therefore, it does not amount to retrenchment and Section 2[oo][bb] of the Industrial Disputes Act will apply and therefore, the labour court has committed an error in not appreciating this contention which was raised by the petitioner. The third contention was raised by learned advocate Mr.Munshaw that she was appointed for one or two hours as per the exigency of the work as per the requirement of the petitioner and the respondent was not at all appointed permanently and she was merely temporary working on hourly basis in a day and therefore, she is not at all entitled to reinstatement as granted by the labour court even without backwages. Therefore, a clear error has been committed by the labour court while passing the award and hence, the award passed by the labour court requires to be quashed and set aside by this Court.

#. Learned advocate Mr. A.S. Supehia, appearing on behalf of the respondent workman has submitted that looking to the documents produced by the petitioner before the labour court, the respondent workman had completed more than 240 days continues service during a calendar year period preceding from the date of termination. The labour court having factually appreciated the evidence which was produced by the

parties before it, has come to the conclusion. Learned advocate Mr.Supehia also submitted that as such, there was no contention raised by the petitioner before the labour court that appointment of the respondent workman was based on periodical basis and therefore, it does not amount to retrenchment and the provisions of Section 2[oo] [bb] will apply. It is also submitted that no specific contention was raised by the petitioner before the labour court, Rajkot nor any such submission was advanced by the petitioner before the labour court. According to Mr.Supehia, learned advocate this is for the first time, such contention is raised which requires to be substantiated by legal evidence as the final determination arrived on the basis of appreciation of factual aspects, cannot be disturbed unless the contention is proved and substantiated by legal evidence. Mr.Supehia, learned advocate further submitted that documentary evidence vide Exh.12 to 14 and 43 - 48 are sufficient to establish the working days of the respondent workman. He also submitted that there was evidence on behalf of the petitioner vide Exh.45, where the witness of the petitioner has admitted the facts that the respondent workman was appointed on 21st January, 1981 as daily wage Clerk in the office of Estate Manager. Thereafter, the respondent workman was appointed on 23rd January, 1982 to 5th April, 1984 continuously on monthly salary of Rs.75/- and ultimately on 7th July, 1984 again the respondent workman was appointed and remained in service upto 30th November, 1984. This evidence has been substantiated with the documentary evidence which has been produced by the petitioner. Mr.Supehia, learned advocate has also submitted that in the evidence of the petitioner at Exh.45, the work which was allotted by petitioner to the respondent workman was permanent work and after termination of the respondent workman, said work given to the respondent workman was looked after and handled by one Shri Joshi. It is further submitted that it is undisputed situation that at the time of termination, Section 25-F has not been complied with by the petitioner. Learned advocate Mr.Supehia has also pointed out that the labour court has considered the actual working days on the basis of the documents produced by the petitioner at Exh.12, 14, 43 and 44, wherein, it reveals that the respondent workman had worked for 89 days in 1981, in the year 1982 - 120 days, in the year 1983 and 365 days and 297 days in the year 1984. These working days have been taken into account by the labour court on the basis of the statement produced by the respondent workman vide Exh.10 and panchanama at Exh.23 / 42 as well as Exh.12 to 14 and 43 produced by the petitioner. Therefore, once the labour court has

appreciated the actual evidence and come to the conclusion that the respondent workman has completed more than 240 days actual service continuously and this fact clearly established from the documentary evidence produced by the petitioner but despite this, Section 25 F provisions were not complied with and therefore, obviously, in such circumstances, termination order is null and void. Learned advocate Mr.Supehia has also relied upon a decision of the Apex Court in case of the Management of M.C.D. v. Prem Chand Gupta reported in AIR 2000 SC 454. Learned advocate Mr.Supehia has also pointed out that not to raise the dispute for period of five years, therefore, the labour court cannot dismiss the Reference only on the ground of delay but the Labour Court ought to have decided the merits and adjudicate the dispute which has been referred by the concerned authority but the labour court can consider the delay while granting the relief. Therefore, he submitted that in the present case, the labour court has not granted any backwages for interim period and therefore, considering the entire award, there is no error apparently committed by the labour court which requires any interference by this Court. Learned advocate Mr.Supehia, also pointed out that this Court has limited powers under Article 226 and 227 of the Constitution and therefore, this Court cannot sit as an appellate authority and cannot appreciate the evidence which was already appreciated by the labour court.

#. I have considered the submissions made by the learned advocates for the parties. I have also perused the award passed by the labour court. However, factual aspects which are not in dispute that the respondent workman had completed 365 days in 1983, 297 days continues service in the year 1984 before the date of termination. These are finding based on the documentary evidence produced by the petitioner. The nature of work which was performed by the respondent workman was permanent in nature and after termination of the respondent workman, this work has been given to one Shri Joshi. The petitioner has not raised contention before the labour court that Section 2[oo][bb] is applicable. However, before this Court, no document has been produced by the petitioner which justify the periodical appointment. The list of working days which has been placed on record by the petitioner as Annexure-E pg.25, wherein, in all months, the petitioner had completed 30 days, 31 days, 25 days and 21 days and similarly other working days. But looking to this statement, the respondent workman remained continued in service and there was no break in service. Therefore, considering Section 25[B] [1][2], the respondent workman

has completed continuous service of one year and it is also established that she had completed 240 days continuous service with the petitioner. If the requirement of Section 25 B has been satisfied, then naturally the respondent workman is entitled to the benefits and protection of Section 25 F, which has not been complied with undisputedly by the petitioner. Therefore, in such circumstances, the order of termination or retrenchment is null and void. This aspect has been examined by the Apex Court in reported decision in AIR 2000 SC 454. The relevant observations made in para-16 are quoted as under :-

"16. To recapitulate, it is a well established fact on the record of this case that the respondent workman though initially appointed for one year from 5-5-1964 on a temporary post of Section Officer [Civil] was continued in service after expiry of that year. His very appointment order of 5-5-1964 mentioned that he could be considered for confirmation after one year of satisfactory service. Even though he was never confirmed, the appellant Corporation did not terminate his services but continued him in service. Not only that, but on 1-10-1964 after giving a short break in service and he was reappointed against a vacant post caused by termination of service of another employee. Thus, at least from 1-10-1964 even though in temporary service, he continued to work on a vacant permanent post of Section Officer [Civil] and continued to served as such for further 18 months up to 29-4-1966 when he was visited with the impugned termination order. By that time he had completed not less than 240 days of continuous service for one calendar year immediately preceding 29-4-1966 i.e. from 1-4-1965 to 29-4-1966. Consequently, Section 25-F of the I.D. Act, 1947 got squarely attracted in his case. It reads as follows :

"25-F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continues service for not less than one year under an employer shall be retrenched by that employer until -

[a] the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of

such notice, wages for the period of the notice.

[b] the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continues service] or any part thereof in excess of six months; and

[c] notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by appropriate Government by notification in the Officer Gazette.]".

It is not in dispute between the parties that these requirements were not complied with by the appellant - Corporation while terminating the respondent - workman's service. The Labour Court rightly held accordingly. However, having so held on facts, the labour court found that section 25-F would not apply for the reasons that the respondent - workman's services were not terminated because of his being an excess staff. The said reasoning of the labour court ran parallel to the earlier decisions of this Court which had taken such a view of interpretation of Section 25-F. But the said line of reasoning no longer held the field in the light of the elater decisions of this Court. In the case of The State Bank of India v. Shri N. Sundara Money [1976] 1 SCC 822 : {AIR 1976 SC 1111 : 1976 Lab IC 769], a three Judge Bench of this Court interpreting Section 25-F read with Section 2[oo] of the I.D. Act, speaking through Krishna Iyer, J. in para 9 of the report clearly laid down that in Section 2[oo] the word `termination' for any reason whatsoever is the key word. Whatever the reason, every termination spells retrenchment. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. The said decision of the three Judge bench was approved by a Constitution Bench of this Court in the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh V. Presiding Officer, Labour Court, Chandigarh [1990] 3 SCC 682, in view of this settled legal position, therefore, it must be held that termination of services of the respondent workman on 29-4-1966 which was admittedly not by way of punishment clearly amounted to retrenchment attracting Section 25-F of the I.D.Act."

#. So far the contention raised by the learned advcoate Mr.H.S.Munshaw that the Reference was belated and made after 5 years from the date of termination and since there is delay, the labour court should not have entertained such Reference. The Apex Court in case of MAHAVIRSINGH VS. U.P. STATE ELECTRICITY reported in 1999 II CLR pg.7 has considered this aspect and held that Reference was made by the workman after 9 years from the date of termination and merely delay in making Reference does not cease the dispute but the aspect of delay can be taken care of at the time of granting relief. Therefore, in view of the Apex Court decision, delay dispute remained in existence, it cannot be ceased and therefore, the delay aspect can be taken into account by the labour court at the time of granting relief, therefore, the Reference was maintainable. However, it made it clear that no such specific contention has been raised by the petitioner before the labour court.

#. After perusing the entire award, it reveals that the labour court has discussed each and every aspect and all the evidence which were led before the labour court. Cogent reason given by the labour court in support of its conclusion. The labour court has not committed any jurisdictional error which requires any interference by this Court. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Artible 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

#. In view of above two decisions of the Apex Court and after perusing the award passed by the labour court, according to my opinion, the labour court has not committed any jurisdictional error. There is no illegality committed by the labour court and as such, there seems no procedural irregularity committed by the labour court. Moreover, this Court cannot reappreciate very evidence once it was appreciated by the labour Court. Even this Court cannot interfere with the finding even if other view is possible. These are the limitations of powers of this Court under Article 226 and 227 of the Constitution of India while examining the award passed by the labour court. Therefore, considering totality of overall facts and circumstances of the case, in view of this court, there is no error committed by the labour court, nor such error is pointed out by the learned advocate Mr.Munshaw, which requires interference by this Court. Therefore, present petition requires to be dismissed.

#. However, in the present petition, initially this Court has issued RULE on 30th July, 2001 made it returnable on 18th September, 2001 and notice as to interim relief returnable on same day and meanwhile, granted ad-interim relief in terms of Para-8[C] which remained continued till date. Therefore, the respondent workman has not been reinstated so far by the petitioner. Therefore, in view of the facts that service of the respondent workman has been terminated in the year 1984, award is declared by the labour court on 30th December, 2000, even though the workman has remained without any wages as the workman has not been reinstated by the petitioner. Therefore, in the interest of justice, it is directed to the petitioner to reinstate the respondent workman with continuity of service without any backwages for interim period from the date of termination till the date of award i.e. upto 30th December, 2000. However, it is directed to the petitioner to pay full wages to the respondent workman with effect from 30th December, 2000 till the date of actual reinstatement within period of six weeks from the date of receiving the copy of this order. It is further directed to the petitioner to reinstate the respondent workman within three weeks from the date of receiving the copy of this order.

#. In the result, present petition stands rejected. Rule discharged with no order as to costs.

Date : 9-1-2002 [H.K.Rathod, J.]

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